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2013 IL App (3d) 130096-U

Order filed November 15, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

<i>In re</i> MARRIAGE OF	) Appeal from the Circuit Court
TONI LABOLLE,	) of the 12th Judicial Circuit,
	) Will County, Illinois,
Petitioner-Appellant,	)
	) Appeal No. 3-13-0096
and	) Circuit No. 09-D-1635
	)
KEVIN LABOLLE,	) Honorable
	) Brian E. Barrett,
Respondent-Appellee.	) Judge, Presiding.

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PRESIDING JUSTICE WRIGHT delivered the judgment of the court  
Justices Carter and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's decision to deny mother's petition to remove the minor children to another state was not against the manifest weight of the evidence.

¶ 2 Toni Labolle petitioned the circuit court of Will County for permission to remove her minor children to Pennsylvania. Kevin Labolle, the children's father, contested the removal.

Following a hearing, the trial court determined that removal was not in the best interests of the children and denied the petition. Toni appeals, arguing that the trial court did not properly weigh

the factors and that its determination was against the manifest weight of the evidence. We affirm.

¶ 3

### FACTS

¶ 4 Toni and Kevin Labolle were divorced on September 24, 2010. The joint parenting agreement granted Toni residential custody of the couple's two children, ages seven and eight. Pursuant to the agreement, Kevin had visitation with the children every other weekend, beginning after school on Thursday and ending when he dropped them off at school on Monday. The schedule also granted Kevin visitation for two weeks during the summer and on alternating holidays. Kevin also coached the children in various sports, including baseball, and played an active role in their school and activities.

¶ 5 On April 20, 2011, Toni filed a petition to remove the children to Pennsylvania. Kevin objected to the removal. At a hearing on the matter, Toni testified that she and the two children lived in a rented two bedroom condominium in Joliet, Illinois. She described the condominium as small and explained that the children shared a small bedroom with approximately 15 feet of play space. The parking lot provided the only outdoor location where the children could play.

¶ 6 Toni testified that she worked part-time as a registered nurse in home health care and earned an average of \$744.98 per month. She also received \$2,400 per month in child support from Kevin.

¶ 7 After the divorce, Toni began a relationship with a man from Pennsylvania named Matthew Rice. Although the couple was not engaged at the time of the hearing, Toni stated that it was her intention to marry Rice and have children with him. She testified her children spent time in Pennsylvania with Rice and his family. According to Toni, the children "adore" Rice and

had a strong relationship with his parents.

¶ 8 Toni testified that she hoped that Kevin would maintain his relationship with the children if removal were granted. She proposed that she would bring the children back to Illinois once every month for an extended weekend of Kevin's choice and would allow Kevin to visit the children in Pennsylvania up to six times per year for whatever amount of time he chose. Toni agreed to pay the travel costs for Kevin to visit the children in Pennsylvania. The couple would alternate holiday time during Thanksgiving, Christmas, Easter, and spring break, and Kevin could have the children for most of the summer.

¶ 9 Rice testified that he was fully committed to his relationship with Toni, and confirmed the couple's intent to marry. He agreed to assume total financial support for both Toni and the children and would pay the costs for Kevin to travel to and from Pennsylvania if the court granted Toni's request for removal. Rice testified that he was a 24.5% owner of Utz Quality Foods and had an estimated net worth in excess of \$100 million. Rice resides in Pennsylvania on a 155-acre estate owned by his parents. He also owns a vacation home in Florida and another residence in Pennsylvania where the mother of his child currently resides. Rice testified that Toni's children enjoyed spending time in Pennsylvania and had a number of friends in the area.

¶ 10 Kevin testified that he was a lieutenant in the Joliet police department and earned a salary of approximately \$140,000 per year. He stated he coached the children in various sports and took an active role in their school and activities. He testified that he enjoys a "great" relationship with his children but worried that removal would have a negative impact on this relationship. Specifically, removal would eliminate his current day-to-day contact with the children and would not allow him to coach or engage in the children's extracurricular activities. Kevin indicated he is

not asking for Rice to support his children or pay his transportation expenses as Kevin viewed the offered payments as a payoff or an incentive to allow the petition for removal.

¶ 11 Dr. Robert B. Shapiro, a court appointed licensed clinical psychologist, testified that, after his investigation of the case, he would recommend removal. However, he stated that it was a close question. He opined that the children's quality of life would be enhanced by the move because they would be living in a two-parent household and Rice had significant financial resources. He acknowledged that the children were doing well in Illinois and that removal would include some negative consequences, such as a change in the nature of the relationship between the children and Kevin. Shapiro concluded, however, that the benefits of removal outweighed the negative impact.

¶ 12 Following the hearing, the court denied Toni's petition for removal in a written memorandum opinion and order. The court found removal would not be in the best interests of the children after considering the four *Eckert* factors. See *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988). The court found removal was not necessary to enhance the quality of life for the children since Toni and Rice's ongoing, committed, relationship was not dependent on removal. The court noted the children's financial situation would improve due to Rice's relationship with Toni even if the children remained in Illinois. Thus, the court concluded that removal was motivated solely by Toni's desire to live with a new spouse.

¶ 13 Next, the court concluded the proposed visitation schedule following removal would negatively affect the quality of Kevin's relationship with his children. Specifically, the court noted that even if the number of days Kevin spent with his children would remain the same, the quality of their relationship would suffer, since Kevin would no longer be able to act as their

coach or participate in school activities. Consequently, the court denied the request for removal after finding the quality of life for the children and Toni would be enhanced regardless of relocation and the proposed modified "visitation schedule should not be placed on Kevin." Toni appeals.

¶ 14

#### ANALYSIS

¶ 15 Toni argues the trial court's ruling denying her request to remove the couple's children to another state was against the manifest weight of the evidence. In addition, she claims the court improperly weighed certain factors.

¶ 16 The case law provides that a trial court should grant a request for removal when it is in the best interests of the children. 750 ILCS 5/609(a) (West 2012). Our supreme court has identified four factors to be considered when determining whether removal is in the best interest of the children: (1) the likelihood for enhancing the general quality of life for both the custodial parent and the children; (2) the motives of the custodial parent in seeking removal; (3) the motives of the noncustodial parent in resisting removal; and (4) whether a realistic and reasonable visitation schedule can be reached if removal is allowed. *Eckert*, 119 Ill. 2d 316. We will only reverse a trial court's determination of the best interest of the children if the ruling was against the manifest weight of the evidence. *Id.*

¶ 17 Here, the trial court explicitly considered the four *Eckert* factors in a thoughtful written order. With respect to the first factor, the court found that the lives of Toni and the children would be enhanced if she did marry Rice; however, the move to Pennsylvania was not necessary for the enhancement to occur. As for the second and third factors, the court determined that there was no "mal intent by either party." Finally, the court found that even if Kevin had the same

number of visitation days after removal, the quality of his relationship with his children would suffer as a consequence of the relocation of the children.

¶ 18 Toni takes issue with the court's finding that her request for removal was solely motivated by her desire to be with Rice. We note Rice indicated he was committed to both Toni and her children under any circumstances including a scenario where she would remain with her children in Illinois. Thus, Toni was not required to move to another state for the purpose of maintaining her relationship with Rice. Consequently, we conclude the trial court's statement was supported by the record and was not inappropriate. See *In re Marriage of Davis*, 229 Ill. App. 3d 653 (1992) (a custodial parent must prove more than a desire to live with a new spouse in order to prove that a child's best interest will be served by removal).

¶ 19 We also agree the record supports the court's finding that removal would likely diminish the quality of the children's relationship with their father, since Kevin would no longer be able to coach the children in sports activities or partake in their school activities. After our review of the record, we find that the trial court properly weighed the *Eckert* factors and considered both the financial and nonfinancial factors necessary in making its determination. The trial court was in a better position to assess the witnesses and their testimony, and its determination is entitled to deference. See *In re Marriage of Stopher*, 328 Ill. App. 3d 1037 (2002). We cannot say that the court's determination was against the manifest weight of the evidence. Therefore, we affirm the trial court's denial of Toni's petition for removal.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.